

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: CAROL BETH GRAIS,  
JAMES M. GRAIS,

BKY. No.: 04-45434  
Chapter 7

Debtors.

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

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TO: CAROL BETH GRAIS, JAMES M. GRAIS AND THEIR ATTORNEY,  
JOHN A. HEDBACK, ATTORNEY AT LAW, 2855 ANTHONY LN. S.,  
STE. 201, ST. ANTHONY, MN 55418.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home  
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for  
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 4, 2004 at 2:00  
P.M. in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth  
Street, in Minneapolis, Minnesota, or as soon as counsel may be heard before The  
Honorable Robert J. Kressel, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than  
November 1, 2004, which is three days before the time set for the hearing (excluding  
Saturdays, Sundays and holidays), or filed and served by mail not later than October 26,  
2004, which is seven days before the time set for the hearing (excluding Saturdays,  
Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS  
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A  
HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on September 28, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the terms of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default in the amount of \$1,639.04 per month for the months of April, 2004 through July, 2004 and \$1,673.56 per month from August 1, 2004 to date, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$203,000.00. The property is encumbered by an additional mortgage lien in the amount of approximately \$115,000.00. According to the Debtors the fair market value of the property is estimated at \$300,000.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: October 1, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D2010)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**VERIFICATION**

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 1, 2004.

WELLS FARGO BANK, N.A.

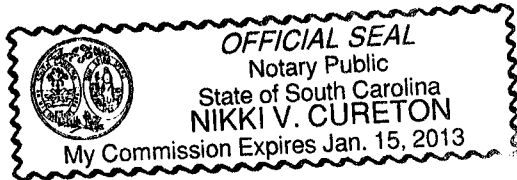
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

1<sup>st</sup> day of October, 2004.

Nikki V. Cureton  
Notary Public



7038789

CERTIFICATE OF RECORD

09 JAN 14 AM 11:52

7038789

14JAN99 11:49 C7038789 SCD \$4.50  
 14JAN99 11:49 C7038789 CDN \$5.00

[Space Above This Line For Recording Date] 14JAN99 11:49 C7038789 PSC \$10.00

## MORTGAGE

14JAN99 11:49 C7038789 DDC \$15.00  
 Stewart Title Co., of MN  
 527 Marquette Ave S Ste. 600  
 Minneapolis, MN 55402  
 98157623

THIS MORTGAGE ("Security Instrument") is given on DECEMBER 15, 1998  
 The mortgagor is JAMES M. GRAIS AND CAROL BETH GRAIS, HUSBAND AND WIFE

Henn Co MRT  
 JSW#26239  
 1/11/99  
 Paid \$495.12

("Borrower"). This Security Instrument is given to NORWEST MORTGAGE, INC.

which is organized and existing under the laws of THE STATE OF CALIFORNIA, and whose  
 address is P.O. BOX 5137, DES MOINES, IA 503065137

("Lender"). Borrower owes Lender the principal sum of  
 TWO HUNDRED SIX THOUSAND TWO HUNDRED FIFTY AND 00/100

Dollars (U.S. \$\*\*\*\*206,250.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
 JANUARY 01, 2029

and for interest at the yearly rate of 6.750

percent. This Security Instrument secures to Lender: (a) the repayment of  
 the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
 payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the  
 Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the  
 following described property located in HENNEPIN County, Minnesota:

LOT 2, BLOCK 3, TONKA MILL WOODS

TAX STATEMENTS SHOULD BE SENT TO: NORWEST MORTGAGE INC., P.O. BOX 5137, DES  
 MOINES, IA 503065137

which has the address of 13124 APRIL LANE, MINNETONKA  
 Minnesota 55305

[Street, City].

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,  
 appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be  
 covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to  
 mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record.  
 Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any  
 encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants  
 with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due  
 the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the  
 Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall  
 pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds")  
 for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property;  
 (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance  
 premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any  
 sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of  
 mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold

Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

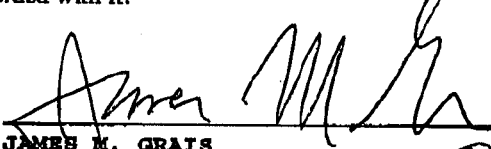
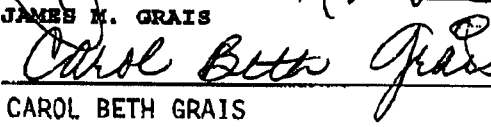
24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider   | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider           | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> VA Rider                | <input type="checkbox"/> Other(s) [specify]             |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____	 JAMES M. GRAIS (Seal) -Borrower
_____	 CAROL BETH GRAIS (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: CAROL BETH GRAIS,  
JAMES M. GRAIS,

BKY. No.: 04-45434  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default in the amount of \$1,639.04 per month for the months of April, 2004 through July, 2004 and \$1,673.56 per month from August 1, 2004 to date, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$203,000.00. The property is encumbered by an additional mortgage lien in the amount of approximately \$115,000.00. According to the Debtors the fair market value of the property is estimated at \$300,000.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

Dated: October 1, 2004

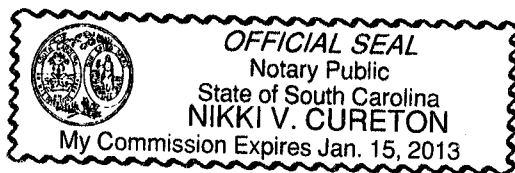
By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

1<sup>st</sup> day of October, 2004.

Nikki V. Cureton

Notary





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: CAROL BETH GRAIS,  
JAMES M. GRAIS,

BKY. No.: 04-45434  
Chapter 7

Debtors.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition on September 28, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Hennepin County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 2, Block 3, Tonka Mill Woods.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$203,000.00. The property is encumbered by an additional mortgage lien in the amount of approximately \$115,000.00. According to the Debtors the fair market value of the property is estimated at \$300,000.00. The payments due under said mortgage are in default in the amount of \$1,639.04 per month for the months of April, 2004 through July, 2004 and \$1,673.56 per month from August 1, 2004 to date, plus accrued late charges and inspection fees.

## II. Argument

### GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$318,000.00 and the fair market value of the property is estimated at \$300,000.00. The Debtors lack any equity in said real property.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: October 1, 2004

By:           /e/ Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
152262/231605  
(D2010)

UNITED STATES BANKRUPTCY COURT  
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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on October 8, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Randall L. Seaver  
Trustee  
12400 Portland Ave. S., Ste. 132  
Burnsville, MN 55337

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Carol Beth Grais  
James M. Grais  
13124 April Lane  
Minnetonka, MN 55305

John A. Hedback  
Attorney at Law  
2855 Anthony Ln. S., Ste. 201  
St. Anthony, MN 55418

Bremer Bank  
1715 W. Cty. Rd. B2  
Roseville, MN 55113

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: October 8, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D2010)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: CAROL BETH GRAIS,  
JAMES M. GRAIS,

BKY. No.: 04-45434  
Chapter 7

Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on November 4, 2004 in Courtroom 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 2, Block 3, Tonka Mill Woods,  
Hennepin County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Robert J. Kressel  
Judge of the U.S. Bankruptcy Court